

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine White	Team: Squad #5	CCRB Case #: 202007423	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 11/05/2020 1:49 AM	Location of Incident: in front of 2387 Stillwell Avenue (Shaba Deli & Grocery)	Precinct: 60	18 Mo. SOL 5/5/2022	EO SOL 5/5/2022	
Date/Time CV Reported Mon, 11/09/2020 6:53 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/09/2020 6:53 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Timothy Brovakos	00000	943025	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mubbashar Zahid	03267	965634	060 PCT
2. POM Khurram Zubair	24264	962891	060 PCT
3. POM Joseph McDonald	03493	964642	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos frisked § 87(2)(b)	
C.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos searched § 87(2)(b)	
D.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos frisked § 87(2)(b)	
E.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.	
G.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.	
H.LT Timothy Brovakos	Discourtesy: Lieutenant Timothy Brovakos spoke discourteously to § 87(2)(b)	

Case Summary

On November 9, 2020, § 87(2)(b) filed this complaint on the CCRB website (**BR01**).

On November 5, 2020, at approximately 1:49 a.m., § 87(2)(b) was driving § 87(2)(b) in § 87(2)(b)'s car. § 87(2)(b) stopped in front of Shaba Deli and Grocery, located at 2387 Stillwell Avenue in Brooklyn, and § 87(2)(b) exited the vehicle. Lieutenant Timothy Brovakos and Police Officers Mubbashar Zahid, Khurram Zubair, and Joseph McDonald, all then assigned to the 60th Precinct, performed a car stop on § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority, § 87(2)(g)**). Lt. Brovakos frisked and searched § 87(2)(b) (**Allegations B-C: Abuse of Authority, § 87(2)(g)**). Lt. Brovakos supervised PO Zahid as he frisked § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). Lt. Brovakos and other officers searched § 87(2)(b)'s vehicle (**Allegation E: Abuse of Authority, § 87(2)(g)**). Lt. Brovakos did not provide § 87(2)(b) or § 87(2)(b) with a Right to Know Act business card (**Allegations F-G: Abuse of Authority, § 87(2)(g)**). Lt. Brovakos allegedly called § 87(2)(b) an “asshole” (**Allegation H: Discourtesy, § 87(2)(g)**).

The investigation obtained BWC videos for PO Zubair (**BR02**), PO Zahid (**BR03**), PO McDonald (**BR04**), and Lt. Brovakos (**BR05**) (video summaries at **BR06-08**).

Lt. Brovakos has since been promoted to Lieutenant Special Assignment and reassigned to the 71st Precinct. PO Zahid has also been reassigned to the 71st Precinct.

On September 8, 2021, this case was reassigned from SI Julian Phillips to the undersigned after SI Phillips' departure from the CCRB.

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant Timothy Brovakos stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

None of the officers' BWC videos (**BR02-05**) captured a view of § 87(2)(b)'s vehicle before the stop. PO Zahid's BWC (**BR03**, at 01:10) shows that § 87(2)(b) asked the reason for the stop, and Lt. Brovakos said of § 87(2)(b) “This guy is zooming around West 11th Street ripping turns, going pretty fast.”

§ 87(2)(b) provided testimony in his initial complaint (**BR01**), a phone statement (**BR09**), and his CCRB interview (**BR10**). § 87(2)(g) § 87(2)(b) denied that § 87(2)(b) exceeded the speed limit or committed any other traffic infractions before stopping at 2387 Stillwell Avenue.

§ 87(2)(b) declined to participate in this complaint and did not provide any testimony.

Lt. Brovakos was not interviewed until approximately ten months after the incident (**BR11**). He testified that he observed § 87(2)(b)'s vehicle commit a traffic infraction at an unknown location, possibly on Stillwell Avenue. He could not recall the specific infraction by the time of his CCRB interview. He said he had a “vague” memory that the vehicle was “riding the yellow lines.” Lt. Brovakos followed the vehicle for approximately thirty seconds, then “likely” activated his turret lights to pull the vehicle over. Lt. Brovakos testified that he did not issue a summons for the traffic infraction because he used his discretion.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Lieutenant Timothy Brovakos frisked § 87(2)(b)
Allegation (C) Abuse of Authority: Lieutenant Timothy Brovakos searched § 87(2)(b)
Allegation (D) Abuse of Authority: Lieutenant Timothy Brovakos frisked § 87(2)(b)
Allegation (E) Abuse of Authority: Lieutenant Timothy Brovakos searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Lt. Brovakos frisked and searched § 87(2)(b) and searched the vehicle, and that PO Zahid frisked § 87(2)(b). These allegations are pleaded against Lt. Brovakos because he supervised his team of subordinate officers during the incident.

§ 87(2)(b) testified that neither he, § 87(2)(b) nor § 87(2)(b)'s vehicle smelled like marijuana, and that there was no marijuana in the vehicle. After the officers approached the vehicle, Lt. Brovakos told § 87(2)(b) that he smelled marijuana. § 87(2)(b) told Lt. Brovakos that there was no marijuana in the vehicle, but also told Lt. Brovakos that he could search the vehicle if he wanted to do so. § 87(2)(b) and § 87(2)(b) exited the vehicle. Lt. Brovakos frisked § 87(2)(b) and PO Zahid frisked § 87(2)(b). Lt. Brovakos and PO Zubair searched § 87(2)(b)'s vehicle. § 87(2)(b) could not see inside the vehicle while the officers searched it.

Lt. Brovakos' BWC footage (**BR05**, beginning at approximately 01:52) shows that he had a conversation with § 87(2)(b) regarding an odor of marijuana in the vehicle. Lt. Brovakos asks § 87(2)(b) "You guys smoking just now?" § 87(2)(b) says, "No." Lt. Brovakos says, "Earlier? It smells a little like weed, I ain't gonna lie to you. So, if you want to lie to me..." § 87(2)(b) says, "I just came from work, so I smoked." Lt. Brovakos says, "I know, I smelled it, that's why I'm asking. You have a lot in the car or just a little bit?" § 87(2)(b) shakes his head. Lt. Brovakos says, "Nothing? Did you smoke just before?" § 87(2)(b) says, "I smoked when I got off work." Lt. Brovakos says, "I am smelling weed, I'm not making it up, I don't lie." At 02:25, Lt. Brovakos frisks § 87(2)(b) and searches his pockets. At 03:21, Lt. Brovakos searches the vehicle.

Lt. Brovakos testified that he smelled a "fresh" odor of burning marijuana emanate from inside the vehicle when he began speaking with § 87(2)(b) and § 87(2)(b). Lt. Brovakos ordered them to exit the vehicle because the odor of marijuana gave him probable cause to search the civilians and vehicle for marijuana. Lt. Brovakos frisked § 87(2)(b) and "likely" reached into his pockets to search for marijuana. Lt. Brovakos did not see what the officers on the far side of the vehicle did, but stated that they "checked" § 87(2)(b) likely in a similar manner. Lt. Brovakos and another officer searched the vehicle for marijuana. Lt. Brovakos searched anywhere marijuana could be hidden, including "lungeable" and "grabbable" areas, the center console, the glove compartment, under the seats, in the back seats, and the trunk.

§ 87(2)(g)

An odor of marijuana emanating from a vehicle gives officers sufficient justification to search the vehicle and its occupants. *People v. Chestnut*, 43 A.D.2d 260 (1974) (**BR12**).

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.

Allegation (G) Abuse of Authority: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.

It is undisputed that Lt. Brovakos did not offer a business card to § 87(2)(b) or § 87(2)(b) and did not direct any of his subordinate officers to do so.

Lt. Brovakos testified that he did not offer § 87(2)(b) or § 87(2)(b) a business card because he had probable cause to search both the vehicle and its passengers due to the smell of marijuana. Lt. Brovakos testified that his understanding of the Patrol Guide was that he was not required to offer a business card during an incident where he had probable cause. Lt. Brovakos did not have any other reason for not offering a business card. Neither civilian asked for a business card.

NYC Administrative Code § 14-174 (BR17) and Patrol Guide Procedure 203-09 (BR13) require that an officer must provide a business card to any civilian whom he stops, frisks, or searches, unless the interaction results in a summons or arrest. Officers must also offer business cards if they search a vehicle in an incident which does not result in a summons or arrest.

§ 87(2)(g)

Allegation (H) Discourtesy: Lieutenant Timothy Brovakos spoke discourteously to § 87(2)(b).

§ 87(2)(b) testified in his phone statement that, at the end of the incident, Lt. Brovakos informed him and § 87(2)(b) that he would be giving them “a break.” Lt. Brovakos then told § 87(2)(b) “Don’t be an asshole.” In his interview, § 87(2)(b) again stated that Lt. Brovakos called him an “asshole.”

The collected BWC footage from all four officers (BR02-05) does not capture Lt. Brovakos calling § 87(2)(b) an “asshole” at any point during the incident. Lt. Brovakos’ BWC footage (BR05, at 07:55) captures the end of the incident. It shows that he did tell § 87(2)(b) and § 87(2)(b) “Alright, man, we’re gonna cut you a break tonight.” § 87(2)(b) replied, “Appreciate that.” Lt. Brovakos said, “Alright. Thanks for acting like a gentleman, alright,” and then got back into his vehicle.

Lt. Brovakos testified that he did not recall calling either civilian an “asshole,” and stated that it was “highly unlikely” and “close to impossible” that he had done so, as he rarely uses such language in his personal or professional life and had reviewed the body worn camera footage and had not heard this.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two CCRB complaints and has been named as a victim in nine allegations (**BR14**):
 - § 87(2)(b)
 -
- Lt. Brovakos has been a member of the NYPD for 15 years and has been a subject in 20 CCRB complaints and 46 allegations, of which four were substantiated:
 - 201500206 involved a substantiated allegation of a vehicle search against Lt. Brovakos. The Board recommended Command Discipline B, and the NYPD imposed Formalized Training.
 - 201905132 involved a substantiated allegation of discourtesy (word) against Lt. Brovakos. The Board recommended Command-Level Instructions, and the NYPD imposed Instructions.
 - 201910398 involved substantiated allegations of discourtesy (word) and failure to provide a business card against Lt. Brovakos. The Board recommended Command Discipline A. The NYPD has not yet imposed discipline.
 - In addition, LT Brovakos is a subject in 15 complaints and 84 allegations, filed after this complaint, all but two of which are still open. The two closed cases have no substantiated allegations.
 - § 87(2)(b)
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of May 4, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (**BR15**).
- § 87(2)(b), § 87(2)(c)

Squad: 5

Investigator:	<u>KW</u> Signature	<u>INV Katherine White</u> Print Title & Name	<u>February 1, 2022</u> Date
Squad Leader:	<u>Daniel Giansante</u> Signature	<u>IM Daniel Giansante</u> Print Title & Name	<u>February 1, 2022</u> Date
Reviewer:	 Signature	 Print Title & Name	 Date